

FILED 144637

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MAY 08 1995

STUART J. O'HARE
CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
E. ST. LOUIS OFFICE

CERRO COPPER PRODUCTS CO. : Hon. Paul E. Riley, U.S.D.J.

Plaintiff : Civil Action No. 92-CV-204

vs. : SUPPLEMENTAL DECLARATION OF
MONSANTO COMPANY, : RICHARD F. RICCI IN SUPPORT
: OF PLAINTIFF'S MOTION TO
Defendants. : COMPEL DEFENDANT'S PRO-
: Duction OF DOCUMENTS

RICHARD F. RICCI hereby declares and says:

1. I am a director of the firm Lowenstein, Sandler, Kohl, Fisher & Boylan, a Professional Corporation, co-counsel for Plaintiff, Cerro Copper Products Company ("Cerro"). As such, I am fully familiar with the proceedings in this matter.

2. On March 3, 1995, I met with Monsanto's counsel in an attempt to resolve these discovery disputes. At that time, I agreed to limit Cerro's request pertaining to Monsanto's use of the Chemical Waste Management Landfill ("CWM Landfill") and its efforts, if any, to obtain a rebate or refund with respect to unconstitutional taxes paid to the State of Alabama for use of that landfill to Monsanto's W.G. Krummrich facility. Monsanto's counsel rejected this offer.

3. Throughout the course of this litigation, Cerro's counsel and Monsanto's counsel have engaged in informal discovery. In other words, Monsanto's counsel has presented Cerro with informal discovery requests, whether

verbal or by letter, which Cerro has honored and Cerro has presented Monsanto with informal discovery requests which Monsanto has honored. The following are specific examples of this informal course of dealing with regard to discovery:

(A) On May 17, 1994, Monsanto wrote to Cerro requesting that they produce a number of items referenced in documents that Cerro had previously produced. Cerro responded in good faith to this informal request and produced the documents. (A copy of Monsanto's request dated May 17, 1994 and Cerro's responsive correspondence documenting these dealings are attached hereto as Exhibit 1.)

(B) On June 2, 1994 and July 25, 1994, Cerro's counsel, in good faith, responded to Monsanto's informal requests, made verbally at the deposition of Cerro employees. A copy of Cerro's responsive correspondence is attached hereto as Exhibit 2.

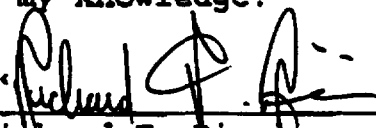
(C) On July 20, 1994, Monsanto responded to one of Cerro's informal requests, dated July 1, 1994, for documents referred to during the deposition of a Monsanto employee. Copies of Cerro's informal request dated July 1, 1994 and Monsanto's response dated July 20, 1994 are attached hereto as Exhibit 3.

4. Documents produced in this litigation demonstrate Cerro's efforts to obtain Monsanto's cooperation with respect to Dead Creek. (A copy of Cerro correspondence to Monsanto is attached hereto as Exhibit 4.)

5. Pursuant to Fed. R. Civ. P. 37(a)(2) and Local Rule 12(c), Cerro has in good faith conferred with Monsanto in an effort to resolve the discovery disputes regarding these documents. Indeed, Cerro remains willing to limit the scope of its request pertaining to the CWM Landfill documents to Monsanto's W.G. Krummrich facility.

6. Despite all of these efforts made by Cerro, Monsanto has persisted in its refusal to produce the requested information.

I declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, the foregoing statements made by me are true and correct to the best of my knowledge.


Richard F. Ricca

Dated: May 5, 1995

003970

5-2874
COBURN CROFT
ATTORNEYS AND COUNSELORS AT LAW

■ SUITE 2900
ONE MERCANTILE CENTER
SAINT LOUIS, MISSOURI 63101
314 621-8575
314 621-2989 FAX

■ SUITE 202
120 WEST MAIN STREET
BELLEVILLE, ILLINOIS 62220
618 277-1020
REPLY TO SAINT LOUIS OFFICE

May 17, 1994

VIA FACSIMILE - (908) 526-9173

John M. Nolan, Esq.
Lowenstein, Sandler, Kohl,
Fisher & Boylan, P.C.
600 First Avenue
Raritan, New Jersey 08869-1308

Re: Cerro Copper Products Company v. Monsanto Company

Dear Mr. Nolan:

This letter confirms our telephone conversation of last week wherein you stated that Cerro Copper would provide ten organizational charts and copies of the drawings and maps labeled 890761-701 found in Drawer 3222-G through 3311 which were reviewed by Monsanto's counsel during Monsanto's document review at Cerro Copper's Sauget facility.

In addition to the above documents, I also request that Cerro Copper produce the following documents:

1. The transformer log referenced in paragraph 2 of an August 12, 1985 Internal Memorandum from Sandy Silverstein to Paul Tandler, document number C01421.
2. The print showing all of Cerro Copper's sewer mains which is referenced in a November 3, 1980 letter from Roy W. Brown to Frank D. Illingworth, Jr., document numbers C03572 and C01690.
3. The August 12 and 19, 1985 letters from J. W. Patterson to Terri Yadick which are referenced in document C01040. Monsanto also requests copies of any answers received from Terri Yadick in reply to Mr. Patterson's letters.

John M. Nolan, Esq.
Lowenstein, Sandler, Kohl,
Fisher & Boylan
May 17, 1994
Page 2

4. The November 14, 1969 letter from W. E. Dunnick to Paul Tandler and Ralph which is referenced in the December 22, 1969 Internal Memorandum from W. E. Dunnick to P. Tandler, document number C03370.
5. The water samples referenced in an August 13, 1976 letter from John Schuster to Calspan Corporation, document number C03510.
6. The four drawings showing the property elevations for Cerro Copper Products Company referenced in the April 3, 1990 letter from Joseph M. Grana to Joseph J. Crawford, document number C03683.
7. The current layouts of the sanitary and/or stormwater piping networks as well as stormwater drainage area maps that Cerro Copper provided to P. H. Weis & Associates, Inc. in response to a March 13, 1990 letter from Joseph J. Crawford to Cerro Copper Products, document number C03713.
8. All monitoring reports including those referenced in the October 13, 1988 Internal Memorandum from S. A. Silverstein to Joe Burroughs, document number C03731.
9. All plant laboratory logs including those referenced in the July 14, 1987 letter from S. A. Silverstein to Dr. James Patterson, document number C07124.
10. A colored reproduction of the print showing all of Cerro's sewer mains which is referenced in a November 3, 1980 letter from Roy W. Brown to Frank D. Illingworth, Jr., document number C03572.
11. A copy of the Warranty Deed from Lilly Mifflin to Cerro Copper referenced in the March 28, 1990 letter from James Stewart to Paul Takacs, document number C03741.

I also request that Cerro produce colored prints of the Layout of Lot in Rear of Plant (C286-2) and the P&I Diagrams (C06266-68).

All of the above documents are responsive to Monsanto's outstanding discovery requests. I would appreciate you providing

John M. Nolan, Esq.
Lowenstein, Sandler, Kohl,
Fisher & Boylan
May 17, 1994
Page 3

all of the above documents on or before Friday, May 20, 1994 so
that such documents are available for the upcoming depositions.

Very truly yours,



Joseph M. Kellmeyer

JMK/cn

003973

88-76313.1

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A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

600 FIRST AVENUE

RARITAN, NEW JERSEY

08869-1308

TELEPHONE (908) 526-3300

FACSIMILE (908) 526-8173

MAILING ADDRESS:

POST OFFICE BOX 1113

SOMERVILLE, NEW JERSEY 08876-1113

ROSELAND OFFICE

TELEPHONE (201) 992-8700

FACSIMILE (201) 992-8820

May 20, 1994

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P. BOYLAN
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ROBERT L. KRAKOWER
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STUART S. YUSEN
SONNIE K. LEVITT
JEFFREY M. DAVIS
HARVEY SMITH
DIANE K. WEELS
RICHARD P. BOEHNER
OF COUNSEL

STEVEN S. FUERST
MANAGING DIRECTOR
SOMERVILLE OFFICE

PHYLLIS F. PASTERNAK
ARTHUR H. SAEWITZ
MARC B. KRAMER
JOHN M. NOLAN
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DAVID J. BLANCH
LAUREN M. FRIEDENBERG
MYLA KAPLAN
ELENA FRANCESCA RAND
PATRICK J. WHALEN
SARAH GODFREY HUNT

*NY BAR ONLY

VIA TELECOPIER

Joseph M. Kellmeyer, Esq.
Coburn & Croft
One Mercantile Center
Suite 2900
St. Louis, Missouri 63101

Re: Cerro Copper Products Co. v. Monsanto Company

Dear Mr. Kellmeyer:

This letter is in response to your letter of May 17, 1994, requesting various documents, including those referenced in discovery which Cerro has already provided.

First, earlier this week we sent you the ten organizational charts as well as copies of drawing 890761-701 via Federal Express as per your request.

As to item #1, Cerro has already provided you with the only transformer logs in its records. These transformer logs are referenced at C00315, C00316, and C01405-C01444. Without a more detailed explanation of which specific transformer log Monsanto is seeking, it is Cerro's position that this log has already been produced.

As to items #2, #6, #7 and #10, in order to obtain such drawings, prints and/or layouts, Cerro would need to have the proper drawing numbers. At this point, there is no way of knowing which specific drawing is being referred to in the documents. In any event, Monsanto's counsel has already reviewed all drawings on site in Cerro's drawing file during their document review at Cerro Copper's Sauget facility. Thus, these prints and drawings have already been produced by Cerro.

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May 20, 1994

As to item #3, Terri Yadick was Cerro's former attorney, and J.W. Patterson was Cerro's former consultant with regard to the lawsuit between the USEPA and Cerro. Therefore, it is Cerro's position that these documents are privileged because they contain confidential communications about that lawsuit.

As to item #4, we are currently trying to locate the November 14, 1969 letter. However, at this point, it appears that this document is no longer in Cerro's files. Monsanto's counsel reviewed Cerro's complete batch of engineering control files, when they conducted document review at the Cerro plant. Thus, if the document still exists, it has already been produced by Cerro.

As to item #5, the wastewater files of John Schuster have already been produced by Cerro. These wastewater files are referenced at C03298, C03299 and C03302.

As to item #8, based on the limited description of this request, there is no way of knowing which monitoring reports Monsanto is requesting.

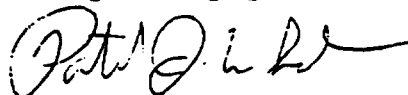
As to item #9, Cerro has already provided all plant laboratory logs requested by Monsanto counsel in response to Monsanto's discovery request. Without any more specific information, it is Cerro's position that Monsanto has already had access to the laboratory logs referred to in the July 14, 1987 letter from S.A. Silverstein to Dr. James Patterson.

As to item #11, the warranty deed from Lilly Mifflin, this document was previously produced by Cerro. Its reference number is C03744. However, we have enclosed an additional copy for your convenience.

With regard to Monsanto's request for colored prints of the layout of the lot in the rear of the plant and the P&I diagrams, I have sent the items out so that colored prints could be made. These color prints will be sent to your on Monday, via Federal Express, prior to Joe Grana's deposition. By the way, the reference number you provided in your letter was incorrect. The proper number is C00286-2, not C286-2.

This should be responsive to your request. If we are able to locate the November 14, 1969 letter to Paul Tandler, item #4 from your letter, I will photocopy it and send it to you immediately.

Very truly yours,



Patrick J. Whalen

PJW/jm
Enclosure
051994PJW/LKellmeyer

bcc: Joseph Grana
Richard F. Ricci, Esq.
John M. Nolan, Esq.

003975

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600 FIRST AVENUE

RARITAN, NEW JERSEY

08869-1308

TELEPHONE (908) 526-3300

FACSIMILE (908) 526-8173

MAILING ADDRESS:

POST OFFICE BOX 1113

SOMERVILLE, NEW JERSEY 08876-1113

ROSELAND OFFICE

TELEPHONE (201) 992-8700

FACSIMILE (201) 992-5820

May 20, 1994

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BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
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RICHARD P. BOEHMER
OF COUNSEL

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MANAGING DIRECTOR
SOMERVILLE OFFICE

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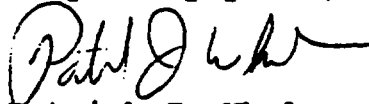
Joseph M. Kellmeyer, Esq.
Coburn & Croft
One Mercantile Center
Suite 2900
St. Louis, Missouri 63101

Re: Cerro Copper Products Co. v. Monsanto Company

Dear Mr. Kellmeyer:

Enclosed are the color prints of the plant layout and the P&I diagrams, C00286-2 and C06266-68, as per Monsanto's request.

Very truly yours,


Patrick J. Whalen

PJW/jm
Enclosures
052094PJW/Kellmeyer2

bcc: Joseph Grana
Richard F. Ricci, Esq.
John M. Nolan, Esq.

003976

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RARITAN, NEW JERSEY

08869-1308

TELEPHONE (908) 526-3300

FACSIMILE (908) 526-8173

MAILING ADDRESS:

POST OFFICE BOX 1113

SOMERVILLE, NEW JERSEY 08876-1113

ROSELAND OFFICE

TELEPHONE (201) 992-8700

FACSIMILE (201) 992-5820

June 13, 1994

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P. BOYLAN
BRUCE D. SHOULSON
JOHN R. HACKETT
MARTIN R. GOODMAN
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ROBERT L. KRAKOWER
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STUART S. YUSEN
BONNIE K. LEVITT
JEFFREY M. DAVIS
HARVEY SMITH
DIANE K. WEEKS
RICHARD P. BOEHMER
OF COUNSEL

STEVEN S. FUERST
MANAGING DIRECTOR
SOMERVILLE OFFICE

PHYLLIS F. PASTERNAK
ARTHUR H. SAIEWITZ
MARC S. KRAMER
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NESLIHAN S. MONTAG
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MAUREEN E. MONTAGUE
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NELSON D. JOHNSON
ABBY J. AGES
KEVIN G. CORLISS
TINA MARIE NIEMOLD
SHERYL A. BERNSTEIN
DAVID J. BIANCHI
LAUREN M. FRIEDENBERG
MYLA KAPLAN
ELENA FRANCESCA RAND
PATRICK J. WHALEN
SARAH GOFFREY HUNT

*NY BAR ONLY

Joseph M. Kellmeyer, Esq.
Coburn & Croft
One Mercantile Center - Suite 2900
St. Louis, Missouri 63101

Re: Cerro Copper Products Co. v. Monsanto Company

Dear Mr. Kellmeyer:

Enclosed please find copies of the four (4) topographic maps that you requested. These are the four (4) property maps that are referred to in the deposition Exhibit marked "Grana Exhibit #25." In addition, I have enclosed copies of two (2) recent Uniform Hazardous Waste Manifests.

Very truly yours,

John M. Nolan

John M. Nolan

JMN/aj
Enclosures
061394JMNL-Kell114

003917

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A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

600 FIRST AVENUE

RARITAN, NEW JERSEY

08869-1308

TELEPHONE (908) 526-3300

FACSIMILE (908) 526-9173

MAILING ADDRESS:

POST OFFICE BOX 1113

SOMERVILLE, NEW JERSEY 08876-1113

ROSELAND OFFICE

TELEPHONE (201) 992-8700

FACSIMILE (201) 992-5820

June 2, 1994

ALAN V. LOWENSTEIN
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HARVEY SMITH
DIANE K. WEEKS
RICHARD P. BOEHMER
OF COUNSEL

STEVEN S. FUERST
MANAGING DIRECTOR
SOMERVILLE OFFICE

PHYLLIS F. PASTERNAK
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JOHN B. MCCUSKER
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MICHAEL N. GOOEN
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RICHARD C. SZUCH
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VIA FEDERAL EXPRESS

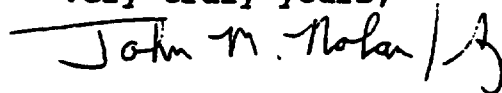
Joseph Nassif, Esq.
Coburn & Croft
One Mercantile Center - Suite 2900
St. Louis, Missouri 63101

Re: Cerro Copper Products Co. v. Monsanto Company

Dear Mr. Nassif:

Enclosed please find documents reflecting soil sample studies conducted at the Cerro plant in Sauget, Illinois. As you will recall, these documents were requested at the deposition of Joseph Grana.

Very truly yours,



John M. Nolan

JMN/aj
Enclosures
060194JMNL-Nassif

bcc: Michael L. Rodburg, Esq.
Richard F. Ricci, Esq.
John M. Nolan, Esq.
Nelson D. Johnson, Esq.
Rebecca S. Stith, Esq.
Mr. Joseph Grana
Diane M. Dieter

003978

LOWENSTEIN, SANDLER, KOHL, FISHER & BOYLAN

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

600 FIRST AVENUE

RARITAN, NEW JERSEY

08869-1308

TELEPHONE (908) 526-3300

FACSIMILE (908) 526-9173

MAILING ADDRESS:

POST OFFICE BOX 1113

SOMERVILLE, NEW JERSEY 08876-1113

ROSELAND OFFICE

TELEPHONE (201) 992-8700

FACSIMILE (201) 992-5820

July 25, 1994

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P. BOYLAN
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OF COUNSEL

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PATRICK J. WHALEN
SARAH GODFREY HUNT

VIA CERTIFIED MAIL, RRR

Kenneth R. Heineman, Esq.
Coburn & Croft
One Mercantile Center - Suite 2900
St. Louis, Missouri 63101

Re: Cerro Copper Products Co. vs. Monsanto Company

Dear Mr. Heineman:

Enclosed please find a copy of the "PCB Annual Document" maintained by Cerro Copper Products Co. It is my understanding that this is the document that was referred to by Mr. Silverstein at his recent deposition.

Very truly yours,


John M. Nolan

JMN/aj
Enclosure
072594JMNL-Heineman

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A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW
65 LIVINGSTON AVENUE
ROSELAND, NEW JERSEY

07068-1791

TELEPHONE (201) 992-8700

FACSIMILE (201) 992-5820

SOMERVILLE OFFICE

TELEPHONE (608) 526-3300

FACSIMILE (608) 526-9173

July 1, 1994

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
BENEDICT M. KOHL
ARNOLD FISHER
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PATRICK J. WHALEN
SARAH GODFREY HUNT

*NY BAR ONLY

Bruce D. Ryder, Esq.
Coburn & Croft
One Mercantile Center
Suite 2900
St. Louis, Missouri 63101

Re: Cerro Copper Products Co. v. Monsanto Co.

Dear Bruce:

We are writing to request production of various documents referred to during the deposition of Richard L. Nelson.

First, on pages 169 to 170 of the Nelson transcript, he refers to various sewer manhole detail drawings which we would like copies of.

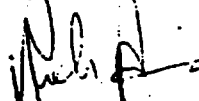
Second, on pages 203 to 204 of the Nelson transcript, he refers to studies by Paul Weis regarding "information of what the potential would be should we have a major storm while we had one of these two lines [i.e. the 24 and 36 inch lines] plug that facilitate the construction of the 1-B replacement box." Mr. Nelson testified that he reviewed those studies in preparation for his deposition.

In reviewing the documents that Monsanto has produced to date, we have been unable to identify or locate any such studies. We would, therefore, appreciate it if you could

produce those studies or, if they have already been produced, provide us with their bates numbers.

Thank you for your attention to this matter.

Very truly yours,



Richard F. Ricci

RFR:cjp

cc: John M. Nolan, Esq.

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COBURN CROFT
ATTORNEYS AND COUNSELORS AT LAW

■ SUITE 2900

ONE MERCANTILE CENTER
SAINT LOUIS, MISSOURI 63101
314 621-8575
314 621-2989 FAX

■ 2400 NATIONSBANK CENTER

700 LOUISIANA
HOUSTON, TEXAS 77002
713 225-3800
713 225-3828 FAX
REPLY TO SAINT LOUIS OFFICE

■ SUITE 202

120 WEST MAIN STREET
BELLEVILLE, ILLINOIS 62220
618 277-1020
REPLY TO SAINT LOUIS OFFICE

July 20, 1994

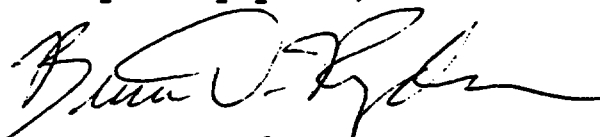
Richard F. Ricci, Esq.
Lowenstein, Sandler, Kohl, Fisher & Boylan
65 Livingston Avenue
Roseland, New Jersey 07068-1791

Re: Cerro Copper Products Co. v. Monsanto Co.
Civil Action No.: 92-CV-204-WDS

Dear Mr. Richard:

Enclosed please find the sewer manhole detailed drawings which you requested in your July 1, 1994 letter. If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,



Bruce D. Ryder

BDR/cn
Enclosures

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JUL 27 1994
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CERRO COPPER PRODUCTS CO.
P.O. Box 66800
St. Louis, MO 63166-6800
E/S/337-6000 Executive Fax 618/337-6402

President

December 20, 1989

Mr. Earle H. Harbison, Jr.,
President & Chief Operating Officer
Monsanto Co.
300 North Lindbergh Boulevard
St. Louis, MO 63167

Re: Sauget Sites

Dear Mr. Harbison:

Environmental conditions in the Village of Sauget, Illinois continue to be of significant concern among responsible industries in the Village, including Monsanto and Cerro, as well as state and federal environmental authorities. The Illinois Environmental Protection Agency ("IEPA"), after several years of fits and starts, and an expenditure of substantially more than a million dollars of investigative costs, has concluded that two areas in Sauget (called Area I and Area II), each area being comprised of a number of sites, must be thoroughly investigated and ultimately remediated. To that end, IEPA has submitted these two areas to the USEPA for listing on the National Priorities List of hazardous sites under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA" or "Superfund"). In addition, IEPA has undertaken strong initiatives with various potentially responsible parties, including Monsanto and Cerro, to encourage voluntary action on their part to investigate and ultimately remediate these sites.

During the past two years, we have had no reason to be encouraged with respect to Monsanto's willingness to assume its usual leadership role concerning the Sauget sites, or to take seriously the initiatives begun by IEPA. Feedback to our representatives obtained through IEPA had indicated that Monsanto was being rather uncooperative and recalcitrant. We at Cerro Copper recognized we had potential responsibility for some of the sites, particularly those to which we hold title. We therefore undertook some initiatives on our own. Beginning during the summer of 1988 after the release of IEPA's consultant's



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study, we have continued an ongoing dialogue with IEPA concerning its actions and intentions.

In contrast to our earlier impressions of Monsanto's position, we were greatly encouraged by the position and attitude taken by Monsanto representatives at a meeting among potentially responsible parties held at Village Hall on December 4, 1989. In particular, it appears now that at least with respect to the sites of Area II, Monsanto is prepared to assume its traditional role as industry leader and to take a responsible and responsive attitude towards IEPA's demands. Cerro's representatives have indicated to your representatives and to IEPA our willingness to work cooperatively within the framework that Monsanto has suggested for initiating investigation of the sites of Area II.

The purpose of this letter is to address one of the sites in Area I, known as Dead Creek Segment A. Some background is necessary.

Monsanto's facility is located generally to the north of the Cerro facility. In earlier years, Dead Creek, with its headwaters somewhat north of Monsanto's facilities, ran generally north to south through Monsanto and Cerro to Cahokia and ultimately the Mississippi River. Through direct discharge of industrial wastewaters and runoff of contaminated wastewaters, it is fair to say that Dead Creek has received a substantial loading of industrial contaminants over time, including wastewaters from Monsanto.

Eventually, Dead Creek was filled on Monsanto's property, "impounded" to the south on Cerro's property, and connected to the Village of Sauget sewer system. The segment of Dead Creek on Cerro's property, known as Dead Creek Segment A, is, in fact, a lagoon which receives runoff of stormwaters and drains into a pipe at its northern terminus into the Village sewer system. The system was designed to provide for backflow of effluent in the Village system into Dead Creek Segment A during storm events. Hence, Dead Creek Segment A has received, in addition to stormwater runoff, backflow of industrial effluent from other facilities, including the Monsanto facility.

As part of its study, IEPA's consultants took samples of contaminated sediments in Dead Creek, and concluded that there were high levels of organic and inorganic pollutants in Dead Creek Segment A sediments. Following that work, Cerro's consultants undertook a detailed characterization of the location, quality and quantity of contaminated

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sediments in Dead Creek Segment A. We have engaged in dialogue with IEPF concerning a removal action for these contaminated sediments. The sediment characterization work undertaken by IEPF and Cerro indicates that a substantial portion of the sediments represents organic waste chemicals from Monsanto operations, and that accordingly Monsanto bears a substantial responsibility for the ultimate cost of removal or remediation.

As with matters generally in Sauget, we would like to work cooperatively with you in all endeavors. To that end, we invite Monsanto representatives to attend a technical briefing session solely for your benefit to discuss the results of our investigation and the planned activities with respect to Dead Creek Segment A. Inasmuch as potentially responsible parties have planned a meeting in Sauget for January 9, 1990, we suggest that January 8 may be an appropriate and convenient time to meet. We are prepared to present and provide to you the technical data which we have obtained, and to advise you in detail of the actions we believe are required with respect to Dead Creek Segment A.

We believe a constructive dialogue at this time will facilitate all of our actions and will lead to meaningful cooperation for now and into the future.

Please feel free to contact me directly as to whether January 8 is convenient for you, or if you wish, have your counsel contact our outside environmental counsel in this matter, Michael Rodburg at (201) 992-8700.

Very truly yours,

CERRO COPPER PRODUCTS CO.



Henry L. Schweich
President

HLS:dw

cc: Robert A. Pritzker
Robert Webb, Esq.
Michael Rodburg, Esq.
Thomas O. Burns, Esq. at Kirkland & Ellis

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